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c. R-13, r.2

Public Water Regulation

Replaced, O.C. 81-2003, 2003 G.O. 2, 900; eff. 2003-02-27; see c. R-13, r.1.1

DIVISION I INTERPRETATION

1. Definitions: In this Regulation, unless otherwise indicated by the context:

«conventional elevation» means an indication of the vertical measurement of water from a conventional level identified by a permanent bench mark located by a survey on the land and appearing in a survey document with description in support thereof; (cote d'élévation conventionnelle)

«geodetic altitude» means the indication of the vertical measurement of water from the mean sea level and that is expressed by the setting up of permanent bench marks or the recognition and placing of other visible marks; (cote d'altitude géodésique)

«lease» means a lease that is not an emphyteutic lease; (bail)

«Minister» means the Minister of the Environment and Wildlife; (ministre)

«public water» means the public domain situated in the bed of the sea, of a watercourse or of a lake, including the shore and banks, namely the strip of land bounded by the natural low and high-water marks, excluding any overflow; (domaine hydrique public)

«real value» means the amount obtained by applying to each square metre of public water the unit rate for adjoining riparian or littoral land based on the assessment per square metre of a parcel of land as determined on the property valuation roll on the date on which the Minister fixes a new rent under section 14 or, failing such assessment, 0,15 \$ per square metre; (valeur réelle)

«unit rate» means the assessment per square metre of land as determined on the property valuation roll on the date of acceptance of the terms of sale or lease offered by the Minister, or in the absence of such assessment, 0,15 \$ per square metre; (taux unitaire)

«value» means the total amount obtained by applying the unit rate of the adjoining riparian or littoral land to each square metre of the public water. (valeur)

O.C. 9-89, s. 1; S.Q., 1994, c. 17, s. 77.

DIVISION II GENERAL

2. Purpose: The purpose of this Regulation is to facilitate management of public water by prescribing the terms on which the Minister is authorized to sell, lease or allow occupation of public water and to agree on its limits.

O.C. 9-89, s. 2.

3. Exception: This Regulation does not apply where the use of public water is required by the Government of Canada or any of its departments or agencies.

O.C. 9-89, s. 3.

4. Consent of adjoining riparian or littoral land owner: The Minister may not grant or renew a right over public water without the consent of the owner of the adjoining riparian or littoral land or the holder of a summer resort lease, except in the case of an occupation licence of a servitude or act of sufferance for non-apparent work or for aquaculture.

O.C. 9-89, s. 4.

5. Compliance with regulations: Before granting a right over public water for any work that has not yet been constructed, the Minister shall:

(1) ensure that a certificate of authorization has been issued for the project under the Environment Quality Act (R.S.Q., c. Q-2) and its regulations to the extent that they apply;

(2) require the filing of an attestation by an authorized official of the municipality and of the regional county municipality, as the case may be, to the effect that the proposed works comply with the municipal by-laws applying thereto.

O.C. 9-89, s. 5.

6. Registration: A deed of sale or a lease of 5 years or more for public water shall be registered, by filing at the Registry Office in the case of cadastered land and in the terrier of the Ministère des Ressources naturelles in the case of non-cadastered land, under section 26 of the Act respecting the lands in the public domain (R.S.Q., c. T-8.1).

Registration expenses shall be borne by the purchaser or the lessee, as the case may be.

O.C. 9-89, s. 6; S.Q., 1994, c. 13, s. 17.

7. Supplementary conditions: A lease or an occupation licence for public water shall provide the following information:

- (1) any preliminary or accessory works to be effected;
- (2) the manner of constructing and operating the proposed works;
- (3) in the case of a lease, the terms and conditions for payment of the rent, for transmission of the lease to legal representatives and for terminating or cancelling the lease.

O.C. 9-89, s. 7.

8. Cancellation or revocation: The Minister may cancel a lease or revoke an occupation licence for public water where the lessee or licence holder does not comply with the Environment Quality Act and its regulations or the provisions of any authorization issued under the Environment Quality Act for the work covered by the lease or occupation licence.

O.C. 9-89, s. 8.

9. Surveying and registration: On cadastered land, any part of the public water that does not bear a separate lot number and that is sold or leased for more than 5 years shall first be surveyed and registered; on non-cadastered land, the survey only is required unless other indication is given that registration is required.

Surveying and registration shall be carried out in accordance with the general and special instructions for land surveying established by the Minister of Natural Resources under section 17 of the Act respecting the lands in the public domain (R.S.Q., c. T-8.1), and at the purchaser's or the lessee's expense, as the case may be.

O.C. 9-89, s. 9; S.Q., 1994, c. 13, s. 17.

DIVISION III SALE

10. Sale: The Minister may sell the public water located in the following territories:

(1) lac Saint-Louis: the part of the public water located between the normal high-water mark and the limit of the encroachments permitted, as shown on the copies annotated in May 1974 of the plans bearing numbers 7693-1 to 7693-5 and 7693-7 to 7693-20 entitled «Master plan for developing the shore of lac Saint-Louis», prepared by the Service du milieu hydrique of the Ministère des Richesses naturelles;

(2) rivière des Prairies: the part of the public water being subdivisions and redivisions of lots 525 to 536 inclusive of the official cadastre of the parish of Sault-au-Récollet, Montréal Registration Division, town of Montréal-Nord, located between the natural high-water mark and the limit of the encroachments permitted, as shown on plans 7C-3032-1 and 7C-3032-2 dated 15 November 1963 and on plan 7C-3913 dated 2 November 1964 prepared by Gendron, Lefebvre et Associés, land surveyors;

(3) rivière Saguenay (baie des Ha! Ha!): the part of the public water known and designated as blocks 11 (block 1 cadastre), 13 (block 2 cadastre), 14 (block 3 cadastre), 15 (block 4 cadastre), 16 (block 5 cadastre), 17 (block 6 cadastre), 18 (block 7 cadastre), 19 (block 8 cadastre) and 20 (block 9 cadastre) of the cadastre of the village of Bagotville, as shown on plan 5329A of land surveyor Michel Corriveau, dated 28 January 1977, and entitled «Beach and deep water lots in the baie des Ha! Ha! of rivière Saguenay»;

(4) rivière Saguenay: the part of the public water located between the high-water mark and the limit of the encroachments permitted, as shown on plan B-8389 prepared in October 1977 and revised on 25 March 1980 by the surveys service of the Ministère des Richesses naturelles, and entitled «Rivière Saguenay Chicoutimi Nord, planimetric survey from the Club nautique du Saguenay to the bridge over ruisseau Tremblay».

O.C. 9-89, s. 10.

11. Price: The selling price for public water shall be 50 % of its value.

O.C. 9-89, s. 11.

11.1. Servitude and act of sufferance: The Minister may grant servitudes of acts of sufferance over public water.

O.C. 9-89, s. 11.1.

11.2. Price: The price for a servitude or act of sufferance shall be the real value with a minimum of 200 \$ per hectare or part thereof for the duration of the servitude or act of sufferance.

O.C. 9-89, s. 11.2.

DIVISION IV
LEASING

12. Lease: The Minister may lease public water for the maximum term and the rent indicated in the following table, taking into account the kinds of use and the purposes:

[R-13r2#01, see 1989 G.O. 2, 136]

Purpose	Profit	Non-profit
Kind of use	Private	Public
Work excluding earthwork		25 years and
10 % of value	25 years and	
5 % of value	25 years and	
5 % of value*		
Without work	25 years and	
10 % of value	1 year and	
2 % of value	1 year and	
2 % of value*		
Earthwork, before and during construction	5 years and	
10 % of value	5 years and	
5 % of value	5 years and	
37 \$ per hectare		
Earthwork, after construction	25 years and	
10 % of value	25 years and	
5 % of value	25 years and	
37 \$ per hectare		

* In the absence of property assessment, the leasing rate is 37 \$ per hectare.

[R-13r2#01, FIN]

O.C. 9-89, s. 12.

13. Minimum rent: Notwithstanding section 12, the annual rent for a part of the public water may not be less than 200 \$ in the case of a profit-making use or a marina, or not less than 25 \$ in all other cases.

O.C. 9-89, s. 13.

14. Adjustment of rent: The annual rent shall remain unchanged for at least 3 years. The Minister may thereafter fix a new rent to take into account the real value of the adjoining riparian or littoral land.

The Minister shall inform the lessee of his intention at least 3 months in advance. In the month following the notice, the lessee may terminate the lease by sending to the Minister notice to that effect.

O.C. 9-89, s. 14.

15. Maximum area: The Minister may not grant a lease for a profit-making use of public water of an area exceeding 5 hectares.

O.C. 9-89, s. 15.

16. Promise to sell: The Minister may grant a lease containing a promise to sell for the land described in section 10.

Where the sale takes place before the expiry of the lease:

- (1) the unit rate used to calculate the value of the land shall be that used for the lease;
- (2) the area involved shall be, notwithstanding the terms of the lease, that calculated in accordance with section 9;
- (3) the purchaser is entitled to a rebate equivalent to 2 years of rent paid.

O.C. 9-89, s. 16.

17. Replacement of lease: When a lessee has finished construction of an earthwork complying with the provisions of the lease, he is entitled to the replacement of the lease for construction of the earthwork by a lease for the constructed earthwork.

O.C. 9-89, s. 17.

18. Multiple uses: Where a lease covers more than one kind of use, the annual rent is fixed in proportion to the parts of the land intended for each use.

The maximum term for the lease is the shortest of those prescribed for the kinds of use covered by the lease under the provisions of the table in section 12.

O.C. 9-89, s. 18.

19. Marina: For the purposes of section 12, the use of public water for a marina is deemed to be private and non-profit, and the unit rate used to determine the value of the land may not exceed 11 \$ per square metre.

The maximum term for the lease is 25 years for a use without a work; the installation of a platform on piles or a floating platform with a movable anchor is not deemed a work for the purposes of this section.

O.C. 9-89, s. 19.

20. The maximum unit rate prescribed by the first paragraph of section 19 is indexed on 1 January of each year in accordance with the last rate of increase of the annual general consumer price index for Canada determined by Statistics Canada.

The maximum unit rate so indexed applies from 1 May of each year.

The Minister shall give notice to the lessee of his new rent not later than 31 January of each year. In the month following the notice, the lessee may terminate the lease by sending a notice to the Minister to that effect.

The indexation of rent must not be considered an adjustment within the meaning of section 14.

O.C. 9-89, s. 20.

21. Aquaculture: The Minister may lease a part of the public water for purposes of commercial aquaculture.

Sections 12 to 15, 17 and 18 do not apply to the lease.

The lease is subject to the following conditions:

- (1) the annual rent shall be 15 \$ per hectare;
- (2) the minimum annual rent shall be 40 \$;
- (3) the maximum term of the lease shall be 20 years;
- (4) the validity of the lease is conditional on the lessee obtaining and subsequently keeping up the licence to operate a fish-breeding plant or to cultivate or harvest aquatic plants on a commercial basis in accordance with the Act respecting commercial fisheries and aquaculture (R.S.Q., c. P-9.01).

O.C. 9-89, s. 21.

22. Lease for more than 5 years: A lease for more than 5 years granted to the owner of the adjoining riparian or littoral land shall contain a survey document establishing the limits.

O.C. 9-89, s. 22.

23. Exception: This Division does not apply to the leasing of public water for the purposes of installing a water retaining work covered by section 37, 63 or 76 of the Watercourses Act (R.S.Q., c. R-13).

O.C. 9-89, s. 23.

DIVISION V OCCUPATION

24. General authorization: The owner of riparian or littoral land adjoining the public water or the holder of a summer resort lease may occupy gratuitously and without the authorization of the Minister of the Environment and Wildlife, under section 54 of the Act respecting the lands in the public domain (R.S.Q., c. T-8.1), the part of the public water fronting on his property to install a platform on piles or a floating platform with a movable anchor, provided the area does not exceed 20 square metres and the platform does not occupy more than 1/10 of the width of the bed of the watercourse at that place.

O.C. 9-89, s. 24; S.Q., 1994, c. 17, s. 77.

25. Occupation licence. The Minister may, by occupation licence, permit the occupation of public water to install one of the following works:

(1) a platform on piles or a floating platform with a movable anchor the area of which exceeds 20 square metres or that occupies more than 1/10 of the width of the river at that place;

(2) work enabling water to be collected or evacuated;

(3) work to protect the shores or banks against erosion, subsidence, landslides or floods;

(4) a bridge whose foundations on the bed of public water do not occupy more than 1/10 of the width at that place;

(5) a cable, a pipe or a work other than a jetty, used to provide a link or communications between the 2 banks.

O.C. 9-89, s. 25.

26. Cost: A licence to occupy public water costs 25 \$, except in the case of paragraphs 4 and 5 of section 25 where the cost of a licence shall be 1,50 \$ per linear metre of the length of the work in question on the public water, subject to a minimum of 25 \$.

A licence to occupy is gratuitous for non-profit public use in the case of paragraphs 2, 4 and 5 of section 25.

O.C. 9-89, s. 26.

27. Duration: A licence to occupy public water is valid for one year. It is automatically renewed and is gratuitous from year to year unless the Minister revokes it after sending 90 days notice to the licence holder.

A licence to occupy public water for the installation of one of the works mentioned in paragraph 4 or 5 of section 25 may be granted for a term of no more than 25 years and the Minister shall not revoke the licence for the duration of the lease.

O.C. 9-89, s. 27.

28. Cancellation: Any licence to occupy public water becomes void automatically where the occupation for which it was granted ceases.

O.C. 9-89, s. 28.

DIVISION VI LIMITS

29. Limits: The Minister is authorized to come to an agreement with the owner of adjoining riparian or littoral land on the limits of the public water.

The limits deal with the placing of the dividing line between the public water and the adjoining riparian or littoral land as well as with the conventional elevation or geodetic altitude used to establish them.

Each party shall assume the costs of the professional services and other services they require for that purpose.

O.C. 9-89, s. 29.

30. Registration: The limits shall be evidenced in writing and must be registered.

Registration expenses shall be borne by the party requesting the limits.

O.C. 9-89, s. 30.

DIVISION VII FINAL

31. Omitted.

O.C. 9-89, s. 31.

32. A promise of sale included in a lease signed under Orders in Council 3516 dated 30 October 1968, 3499-74 dated 2 October 1974, 2969-79 dated 31 October 1979, and 1664-80 dated 4 June 1980 and section 16 shall cease to have effect on 9 February 1995 if, on that date, the purchaser has not paid the fees for the purpose of completing the sale.

O.C. 9-89, s. 32 (part).

33. Omitted.

O.C. 9-89, s. 33.

O.C. 9-89, 1989 G.O. 2, 135

O.C. 779-89, 1989 G.O. 2, 2307